

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARK ZAJACS,)
Plaintiff,)
v) 2:11-cv-280
ARMSTRONG COUNTY MEMORIAL)
HOSPITAL,)
Defendant.)
)

MEMORANDUM ORDER

Pending before the Court is the MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT (Document No. 7) filed by Defendant Armstrong County Memorial Hospital (the "Hospital"). Defendant filed a brief in support of the motion and also submitted an affidavit from Anne Remaley, Vice President of Human Resources at the Hospital, and several other documents. Plaintiff Mark Zajacs ("Zajacs") filed a response and brief in opposition to the motion and executed an affidavit. Defendant filed a reply brief and the motion is ripe for disposition.

Factual and Procedural History

Plaintiff avers in the Complaint that he was employed by the Hospital for approximately twenty years prior to his termination in June 2010. In 2004, Zajacs was promoted to the position of CT Technologist. In ¶ 9, Zajacs avers that he "was fully qualified for the position of CT Technologist and was repeatedly commended for his performance."

Zajacs avers that his supervisor fabricated the alleged violations which were cited by the Hospital as the basis for his termination and that the real reason for his discharge was age

discrimination. In ¶ 14, Zajacs avers that following his termination a substantially younger employee was hired to replace him. On March 3, 2011, Zajacs filed a one-count Complaint for wrongful discharge under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 et seq. Plaintiff notes that a PHRA claim will be added after the administrative remedies have been exhausted.

Discussion

Defendant contends that Zajacs cannot state a valid claim for age discrimination because he was replaced by Donna Ziegler, an older employee – as allegedly demonstrated by the documents attached to its brief. Defendant also contends that Zajacs has failed to allege that he was qualified for his position. Defendant requests that the Complaint be dismissed without an opportunity to re-plead, or alternatively, that the Court grant summary judgment in favor of the Hospital.

In response, Plaintiff points out that he has not yet had an opportunity to conduct any formal discovery. Plaintiff’s counsel further explains that based on an informal investigation, Plaintiff believes that he was replaced by Jamie Silvis and/or Tammy Johns, who are both substantially younger individuals.

The Court concludes that the Complaint properly pleads all of the elements of the prima facie case of age discrimination. Paragraph 9 of the Complaint specifically alleges that Zajacs was “fully qualified” for the position of CT Technologist. Moreover, the Complaint demonstrates that Zajacs had been performing that job for approximately six years prior to his termination. Similarly, the Complaint alleges that Zajacs was replaced by a significantly

younger person. Accordingly, the Complaint is not subject to dismissal pursuant to Fed. R. Civ. P. 12(b)(6).

There appear to be genuine issues of material fact with respect to: (1) whether Zajacs was replaced by a significantly younger person; and (2) whether the reasons proffered by the Hospital for his discharge were pretextual. Defendant has not yet filed an Answer and the parties have not yet conducted any discovery. Accordingly, the Hospital's motion for summary judgment is premature. *See* Fed R. Civ. P. 56(d).

In accordance with the foregoing, the MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT (Document No. 7) filed by Defendant Armstrong County Memorial Hospital is **DENIED**. Defendant shall file an Answer to the Complaint on or before June 21, 2011.

SO ORDERED this 7th day of June, 2011.

BY THE COURT:

s/Terrence F. McVerry
United States District Judge

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